

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

A. Johnson Company

**Final Plan Application
For A
Subdivision Amendment
Application # PC-08-15**

Background

The original three-lot subdivision was approved on September 17, 1998; this decision was appealed to Environmental Court (Docket No. 179-10-98 Vtec), which resulted in a Stipulation to Judgment and Judgment Order filed on January 28, 1999. The subdivision approval was reaffirmed by the Planning Commission on September 2, 1999. A Subdivision Amendment (PC-00-08) allowing the septic systems to be reconfigured was approved on March 16, 2000. Sketch Plan Review for the current proposal was held on February 7 and 21, 2008 and the project was classified as a Minor Subdivision.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was held on June 12, 2008. The following parties were present: Steve Libby, Stephen Selin, and William Sayre representing the applicant; Jesse Mohr, a consulting ecologist, whose fee was split between the applicant and the Town; and Linda Hamilton of the Charlotte Conservation Commission. No adjoining property owners were present or submitted comments in writing.

Regulations in Effect

Town Plan adopted March, 2008

Land Use Regulations adopted March, 2006.

Sewage Ordinance as amended December, 2004.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The current application proposes to move the building envelope and change the driveway for Lot 2.
2. The following items were submitted at or just prior to the hearing on June 12th:
 - A. A memorandum dated June 11, 2008 to the Charlotte Planning Commission from Steve Libby regarding "A. Johnson Co.- Lewis Creek Subdivision Amendment - Lot #2."

- B. A sheet entitled “Lewis Creek: Lot #2 Subdivision Permit Amendment – June 12, 2008, Outline of Proposal.”
 - C. Two e-mails from Christopher W. Davis, Chief of the Charlotte Volunteer Fire Department; both were dated June 4, 2008 and both were sent to Dean Bloch with subject of “A. Johnson Estates, Lewis Creek Road, Charlotte; Lot 2 driveway options.”
 - D. A drawing labeled “Potential House on Approved Building Envelope.”
 - E. A drawing labeled “Proposed New Curb Cut and Relocated Building Envelope.”
 - F. A drawing depicting the plan and profile views of the proposed building envelope and the proposed driveway, overlaid on a drawing by Otter Creek Engineering entitled “A. Johnson, Lewis Creek Estates Lot 2, Charlotte, Vermont; Access Drive Option 1; sheet 1 of 2” dated 5/5/08, no revisions.
 - G. A drawing depicting the plan view of the existing building envelope with a driveway from the existing access road, overlaid on a drawing by Otter Creek Engineering entitled “A. Johnson, Lewis Creek Estates Lot 2, Charlotte, Vermont; Access Drive Option 2; sheet 2 of 2” dated 5/5/08, no revisions.
3. The project area includes or is adjacent to the following *areas of high public value* which are listed in Table 7.1 of the Charlotte Land Use Regulations:
 - A. Steep Slopes (equal to or in excess of 15%)—data from the Chittenden County Regional Planning Commission indicates that the proposed driveway will likely impact steep slopes. The sheet by Otter Creek Engineering entitled “Access Drive Option 1” appears to support this conclusion. The existing building envelope and approved access may also impact steep slopes.
 - B. Critical Wildlife Habitat—Map 6 of the Charlotte Town Plan indicates that the proposed and existing building envelopes include forest habitat. The report by Jesse Mohr submitted with the application indicates that “clearing for the house and driveway will all occur with (sic) a ‘Significant Forest Habitat’ block.” (Page 3) [The analysis by Mohr uses a map entitled “2008 Significant Wildlife Habitat Map” (as described on page 2 of the report); this map has not been formally adopted by the Town.]
 - C. Scenic View—Lewis Creek Road is depicted as a “most scenic road” on Map 13 in the Town Plan. Additionally, as indicated on page 60 of the Town Plan, Lewis Creek Road is one of three roads in Town that have been designated as “scenic roads” under the Vermont Scenic Highway Law.
 - D. Conserved Land on Adjacent Parcels—Lot 3 of the A. Johnson subdivision (except for the building envelope) is under an Open Space Agreement with the Town; also, the parcel to the east owned by Lawrence Johnson has been conserved by the Charlotte Land Trust.
 4. The report by Mohr indicates that the difference between the approved and proposed building envelopes and driveways is negligible, however, in many places the report indicates that the future development of Lot 3 will “mask” impacts that the current application would have on wildlife habitat. Although the report does not specifically analyze the building envelope on Lot 3, it mentions that this envelope is located at the edge of a ledge that is likely to be used by wildlife for travel.
 5. Figure 2 in the report by Mohr shows that the “edge effect” from the proposed building envelope and driveway are closer to, although not within, the Lawrence Johnson parcel to

- the east, which has been conserved by the Charlotte Land Trust.
6. The report by Mohr states (on page 14) “my findings suggest that construction at the proposed location will likely result in higher levels of short-term and long-term impacts to wildlife. However, I believe that the Lot 2 house design and how the portions of Lot 2 outside of the building envelope are used, could have a greater impact on the wildlife values of the area than the house/driveway location. I have, therefore proposed a series of permit conditions and management recommendations to mitigate and address the adverse impacts of development on this site.”
 7. The Planning Commission finds that many of the permit conditions as well as the management recommendations suggested by Mohr (page 13 & 14) would be difficult if not impossible to enforce.
 8. It is the Planning Commission’s understanding that the existing roadway serving Lots 1, 2 and 3 was carefully designed during the original subdivision process.
 9. The proposed curb-cut is approximately 200 feet from the existing roadway. The proposed driveway creates a new break in the woodline, which, because of the slope, will need a flared opening. The scenic value of Lewis Creek Road would be impacted negatively by the proposed new driveway (depicted as Driveway Option #1) as it would create a new opening. Since Lot #2 can currently be accessed by the approved private roadway (which has already been partially constructed), the prospective impact by Driveway Option #1 is considered unduly adverse.
 10. The new driveway (depicted as Driveway Option #1) will need significant cut and fill near the curb-cut and near the building envelope.
 11. Section 7.3 (D)(1) of the Charlotte Land Use Regulations states:
“Building envelopes, to the extent feasible, shall be located, sited and configured so as to not create any undue adverse impacts on Areas of High Public Value. In the event that no other land in the parcel to be subdivided is suitable for development, building envelopes shall be designed to minimize encroachments into these areas and to minimize adverse impacts.”
 12. Existing subdivision permits currently allow development on Lot 2 (after application and issuance of a Zoning Permit). Therefore, any amendment should only be approved if it provides a clear improvement by reducing prospective impacts to areas of high public value allowed by the existing permits.
 13. The Planning Commission finds that the proposed amendment has not minimized undue adverse impacts on critical wildlife habitat, steep slopes, the scenic road, and conserved land on and in the vicinity of the project.
 14. The application does not propose any changes to Lot 3, which, as Mohr states, masks the impacts to wildlife habitat of the proposed amendment on Lot 2. By ignoring the impacts of Lot 3, the proposal is a piece-meal approach to modifying the existing subdivision. The proposed amendment to Lot 2 may be acceptable if it were to be submitted with a proposal to reduce the impacts of Lot 3.

Decision

Based on these Findings, the Planning Commission denies the Final Plan Application as proposed.

This decision may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the date of the 4th signature below, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Members Present at the Public Hearing on June 12: Jeff McDonald, Jim Donovan, John Owen, Robin Pierce, Peter Joslin and Eleanor Russell

Vote of Members after Deliberations:

The following is the vote for or against the application, with conditions as stated in this Decision:

- 1. Signed: _____ For / Against Date Signed: _____
- 2. Signed: _____ For / Against Date Signed: _____
- 3. Signed: _____ For / Against Date Signed: _____
- 4. Signed: _____ For / Against Date Signed: _____
- 5. Signed: _____ For / Against Date Signed: _____
- 6. Signed: _____ For / Against Date Signed: _____
- 7. Signed: _____ For / Against Date Signed: _____

APPENDIX A

The following items were submitted with the application:

- 1. An application form and appropriate fee.
- 2. A memorandum dated May 9, 2008 to the Charlotte Planning Commission from Steve Libby regarding "A. Johnson Co. – Lewis Creek Subdivision Amendment – Lot #2."
- 3. A list of property abutters.
- 4. A sheet by Otter Creek Engineering, Inc. entitled "A. Johnson Company, Lewis Creek Estates Subdivision, Charlotte, Vermont; Overall Site Plan; Sheet 1 of 1" dated 2/05/08, no revisions.
- 5. A sheet by Otter Creek Engineering, Inc. entitled "A. Johnson, Lewis Creek Estates, Lot 2, Charlotte, Vermont; Access Drive Option 1; sheet 1 of 2" dated 5/5/08, no revisions.
- 6. A sheet by Otter Creek Engineering, Inc. entitled "A. Johnson, Lewis Creek Estates, Lot 2, Charlotte, Vermont; Access Drive Option 2; sheet 2 of 2" dated 5/5/08, no revisions.
- 7. A letter from Kenneth D. Johnson dated November 26, 2007 authorizing Steve Libby to complete and sign the application and to appear for and act as agent for The A. Johnson Co., LLC for this proposed subdivision amendment.
- 8. A document entitled "Review of Wildlife-based Considerations in the A. Johnson Lot 2 Subdivision Amendment" by Jesse Mohr of Native Geographic, LLC.

